

**CITY OF HAYWARD'S
SMOKING ORDINANCE**

SUPERSEDED BY

**NEW STATE CODE
Section 6404.5 of the Labor Code**

EFFECTIVE 1-1-98

ARTICLE 6

SMOKING POLLUTION CONTROL

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ARTICLE 6

SMOKING POLLUTION CONTROL

SEC. 5-6.00 TITLE. This article shall be known as the 'Smoking Pollution Control Ordinance.'

SEC. 5-6.01 FINDINGS AND PURPOSE. The City Council of the City of Hayward hereby finds that:

- a. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and
- b. Reliable studies have shown that breathing second-hand smoke is a significant health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
- c. Health hazards induced by breathing second-hand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and
- d. Nonsmokers with allergies and respiratory diseases and those who suffer other ill effects of breathing second-hand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and
- e. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places and places of employment.
- f. Accordingly, the City Council finds that the health, safety, and general welfare of the residents of, persons employed in, and persons who frequent this City would be benefited by the regulation of smoking in enclosed places, including places of employment.
- g. Assembly Bill 13 (T. Friedman -- Chapter 310, Statutes of 1994), became effective January 1, 1995. Assembly Bill 13 amended the California Labor Code by adding section 6404.5. Labor Code section 6404.5 generally prohibits smoking in enclosed places of employment. It supersedes local ordinances regarding smoking in the workplace regulations that are weaker than the standards it establishes; however, local governments are authorized to enact ordinances with stronger standards, and to regulate smoking in areas not covered by Labor Code section 6404.5.

SEC. 5-6.02 DEFINITIONS. The following words and phrases, whenever used in this article, shall be construed as defined in this section:

- a. 'Bar' or 'tavern' means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. 'Bar' or 'tavern' includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located with a

building in conjunction with another use, including a restaurant, 'bar' or 'tavern' includes only those areas used primarily for the sale and service of alcoholic beverages. 'Bar' or 'tavern' does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

- b. 'Bingo facility' means any enclosed place in which and during such time as any bingo game, permitted under the provisions of Hayward Municipal Code Section 4-3.00 et seq., is being conducted.
- c. 'Employee' means any individual who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
- d. 'Employer' means any person that employs the services of one or more individuals.
- e. 'Enclosed' means closed in by roof and four walls with appropriate openings for ingress and egress.
- f. 'Place of Employment' means any enclosed area under the control of an employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges, restrooms, conference rooms, classrooms, cafeterias, and hallways. Notwithstanding the preceding sentence, neither of the following is a place of employment (Labor Code § 6404.5):
 - (1) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present. (Labor Code § 6404.5 subd. (d)(11).)
 - (2) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code. (Labor Code § 6404.5, subd. (d)(12).)
 - (3) A bingo facility.
- g. 'Public Place' means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to: banks, educational facilities, health facilities, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms, unless such place is subject to another definition set forth in this section.
- h. 'Restaurant' means any coffee shop, cafeteria, tavern, sandwich stand, soda fountain, private or public school cafeteria, and any other eating establishment, organization, club, boardinghouse, or guest house, which gives or offers food for sale to the public, guests, patrons, or employees, except that the term 'restaurant' shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a 'bar' as defined in section 5-6.02a.
- i. 'Service Line' means any indoor or outdoor line at which one or more individuals is waiting for or receiving service of any kind, whether or not such service includes the exchange of money.
- j. 'Smoking' means the carrying or holding of a lighted pipe, cigar, or cigarette of any

kind, or any other lighted smoking equipment or the lighting of or the emitting or inhaling the smoke of a pipe, cigar, or cigarette of any kind.

- k. 'Sports Arena' means enclosed or outdoor sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.

SEC. 5-6.03 REGULATION OF SMOKING IN CITY-OWNED FACILITIES. All enclosed facilities owned or leased by the City of Hayward shall be subject to the provisions of this article and any relevant City Administrative Rules.

SEC. 5-6.04 PROHIBITION OF SMOKING IN PUBLIC PLACES. Smoking shall be prohibited in the following places within the City of Hayward:

- a. All enclosed areas available to and customarily used by the general public and all businesses patronized by the public, including, but not limited to, retail stores, hotels and motels, pharmacies, banks, attorneys' offices, and other offices.
- b. Within all restaurants. (Labor Code, § 6404.5) Additionally, with respect to any outdoor seating area for such restaurants, a contiguous area containing no more than 50 percent of the outdoor seating capacity may be designated as a smoking area.
- c. Waiting rooms, hallways, wards, and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices. These facilities are also subject to the provisions of Section 5-6.05 of this article regulating smoking in places of employment. (Labor Code, § 6404.5)
- d. Elevators, public restrooms, service lines, buses, taxicabs and other means of public transit under the authority of the City, and in ticket, boarding, and waiting areas of public transit depots. (Labor Code, § 6404.5)
- e. In public areas of museums and galleries.
- f. Enclosed theaters, auditoriums, and halls which are used for motion pictures, stage dramas, musical performances, ballets or other exhibitions, except when smoking is an integral part of the story in the theatrical production. (Labor Code, § 6404.5)
- g. Retail food marketing establishments, including grocery stores and supermarkets; these facilities are also subject to the provisions of section 5-6.05 of this article regulating smoking in places of employment. (Labor Code, § 6404.5)
- h. Public schools and other public facilities under the control of a public agency other than the City are available to and customarily used by the general public.
- i. Sports arenas.
- j. Within any bingo facility; provided, however, that this prohibition does not prevent (1) the designating of a contiguous area within the bingo facility that contains no more than 50 percent of the seating capacity of the bingo facility as a smoking area, or (2) the providing of separate rooms designated as smoking rooms so long as said

rooms do not contain more than 50 percent of the seating capacity of the bingo facility.

- k. Within enclosed lobbies, hallways, or other enclosed common areas in apartment buildings, condominiums, and retirement facilities, and other multiple family residential facilities.
- l. Within enclosed common areas for hotels and motels as well as 35 percent of private hotel and motel rooms rented to transients, as defined in Hayward Municipal Code Chapter 8, Article 4. (Labor Code, § 6404.5)
- m. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare the entire establishment as a nonsmoking establishment.

SEC. 5-6.05 REGULATION OF SMOKING IN PLACES OF EMPLOYMENT.

- a. It shall be the responsibility of employers to provide smoke-free work places for all employees. (Labor Code, § 6404.5)
- b. Each employer and each place of employment located within the City shall adopt, implement, make known, and maintain a written smoking policy, which shall contain at a minimum the following requirements:
 - (1) Prohibition of smoking in all enclosed places of employment, including private offices, cubicles, open office areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, and restrooms.
 - (2) In any dispute arising under this smoking policy, the health concerns of the nonsmoker shall be given precedence.
- c. The smoking policy shall be communicated to all employees.
- d. All employers shall supply a written copy of the smoking policy to any prospective employee who requests a copy.
- e. Notwithstanding any other provisions of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area. (Labor Code, § 6404.5)
- f. The written smoking policy required under this section may consist of the text of this article or of the relevant provisions thereof.

SEC. 5-6.06 WHERE SMOKING NOT REGULATED. Notwithstanding any other provisions to the contrary, the following areas shall not be subject to the restrictions of this article:

- a. Bars.
- b. Private residences, unless such a residence is used as a child care or a health care facility as defined in Section 5-6.02, subdivision f. of this ordinance.

- c. No more than 65 percent of hotel and motel rooms rented to transient occupants, or any such rooms rented in excess of 30 days. (Labor Code, § 6404.5)
- d. Retail stores that deal exclusively in the sale of tobacco and smoking paraphernalia.
- e. Restaurant, hotel, and motel conference rooms, meeting rooms, and public or private assembly rooms while these places are being used for private functions, as defined in Section 5-6.02, subdivision f. of this ordinance. (Labor Code, § 6404.5)
- f. Patient smoking areas in long-term health care facilities, as defined in section 1418 of the California Health and Safety Code.
- g. Notwithstanding any other provisions of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

SEC. 5-6.07 POSTING OF SIGNS. Employers must post clear and prominent signs, as follows:

- a. Where smoking is prohibited throughout the building or structure, a sign stating 'No Smoking' shall be posted at each entrance to the building or structure.
- b. Where smoking is permitted in designated areas of the building or structure, a sign stating 'Smoking is prohibited except in designated areas' shall be posted at each entrance to the building or structure. (Labor Code, § 6404.5).

SEC. 5-6.08 TOBACCO SAMPLES PROHIBITED. No person shall knowingly distribute, furnish without charge, or cause to be furnished without charge for a commercial purpose, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, at any event open to the public or in any public place, including but not limited to any public way, mall or shopping center, park, playground, or any property owned by the City or any other public agency, except in a retail tobacco store.

SEC. 5-6.09 TOBACCO VENDING MACHINES RESTRICTED. No cigarette or other tobacco product may be sold, offered for sale or distributed by or from a vending machine or other appliance or similar device designed or used for vending purposes, except in a bar.

SEC. 5-6.10 ENFORCEMENT.

- a. Enforcement shall be implemented by the City Manager or designee.
- b. Any citizen who desires to register a complaint hereunder may initiate enforcement with the City Manager or designee.
- c. Any owner, manager, operator, or employer of any establishment controlled by this article shall have the right to inform persons violating this article of the applicable provisions hereof.
- d. The City Manager or designee shall direct the Fire Chief to require that the owner, manager, operator, or other individual having control over an establishment that is subject to an otherwise mandatory inspection to sign a certification in a form provided by the Fire Chief, of compliance with all the applicable requirements of this

article.

SEC. 5-6.11 PENALTIES.

- a. It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this article to fail to properly post signs required hereunder, or to fail to provide signs for the use of employees in designating their areas, or to fail to properly set aside 'No Smoking' areas, or to fail to adopt a smoking restriction policy, or to fail to comply with any other requirements of this article.
- b. It shall be unlawful for any person to smoke in any area restricted by the provisions of this article.

SEC. 5-6.12 NONRETALIATION. No person shall discharge, refuse to hire, or in any other manner retaliate against any individual because such individual exercises any rights afforded by this article.

SEC. 5-6.13 OTHER APPLICABLE LAWS. This article shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by any other applicable law or regulation.